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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/858,366	05/16/2001	Richard A. Brauckman	TGXX-1005US	3214

7590 04/13/2005

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EXAMINER

RAMANA, ANURADHA

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 04/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/858,366

Applicant(s)

BRAUCKMAN ET AL.

Examiner

Anu Ramana

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-18, 20-31, 33 and 35-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-18, 20-31, 33, 35 and 37-39 is/are allowed.
- 6) ☒ Claim(s) 7-10, 12 and 14 is/are rejected.
- 7) ☒ Claim(s) 11 and 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/14/2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

The finality of the last office action is withdrawn due to the new rejections in this office action.

Specification

The disclosure is objected to because of the following informalities. On page 12, line 24, Figure 10 should be Figure 11 to correct a minor typographical error.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 12 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim contains subject matter that was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Independent claim 7 recites that a portion of a catheter body is removable to provide access to the cavity in which the radioactive source is housed. Claim 12, dependent on claim 7, further states that the radioactive source is housed in the distal end of a carrier located in the catheter body. The limitations of claim 12 are not supported by Applicants' disclosure (Fig. 4 and page 8, lines 22-33), which states that the distal portion of carrier 37 and not catheter 40 is a plug 43 which can be removed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Liprie (US 5,282,781).

Liprie discloses a flexible metal tube or "catheter" 12 having a radioactive source core or "pellet" 25 housed in a cavity at a distal end of the tube wherein a plug 27 is provided to seal the radioactive source in the cavity and the radioactive source provides radioactivity in a range of 0.1 curie to about 1 curie per cm length of the radioactive portion (col. 8, lines 60-68, col. 9, lines 1-28, col. 10, lines 17-68, col. 11, lines 1-28 and MPEP 2131.03).

It is noted that the plug 27 is capable of being removed or "is removable" if access to the cavity is desired.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 10 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liprie (US 5,282,781), as applied to claim 7, in view of Coniglione et al. (US 6,589,502).

Liprie discloses all elements of the claimed invention except for the radioactive source being immobilized in a polymeric material.

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Coniglione et al. teach forming a radioactive source, such as a pellet, by mixing radioactive material in a polymeric matrix (col. 4, lines 47-55).

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a pellet made of radioactive material immobilized in a polymeric matrix since it was known in the art make a radioactive source by immobilizing a radioactive material in a polymeric matrix.

Regarding claims 10 and 36, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized a polymer such as a silicone or polyimide elastomer, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use, herein flexibility, as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Liprie (US 5,282,781), as applied to claim 7.

Liprie discloses all elements of the claimed invention except for carrier-free palladium 103 as the radiation source.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided a radioactive source such as carrier-free palladium-103, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use, herein a safe source of radioactivity, as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Allowable Subject Matter

The indicated allowability of claims 7-10, 12 and 36 is withdrawn in view of the new grounds of rejection.

Claims 11 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Claims 15-18, 20-30, 31, 33, 35, 37, 38 and 39 are allowed.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached at (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AR *Anu Ramana*
April 8, 2005


KEVIN SHAVER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700